

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:BR6

PLR-123934-14

Date:

December 15, 2014

In Re:

### LEGEND

Taxpayer	=
Individual	=
Trust	=
Accounting Firm	=
Law Firm	=
Attorney	=
Year 1	=
Year 2	=
Date 1	=
Date 2	=

Dear :

This responds to a letter dated June 12, 2014, submitted on behalf of Taxpayer, requesting that the Internal Revenue Service ("Service") grant Taxpayer an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A ("Election To Be Treated as an Interest Charge DISC") for Taxpayer's first taxable year.

The rulings given in this letter are based on facts and representations submitted by Taxpayer, Accounting Firm, Law Firm, and Attorney, and accompanied by penalty of perjury statements executed by appropriate parties. This office has not verified any of the materials submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as part of the audit process.

## FACTS

Taxpayer is a domestic corporation owned by Individual and Trust. Individual is president of Taxpayer, trustee of Trust, and a sole proprietor.<sup>1</sup> Accounting Firm is an accounting, and tax and financial planning organization. Law Firm is a full-service law firm. Attorney is a licensed tax attorney employed by Law Firm. In late Year 1 or early Year 2, Accounting Firm advised Individual of the benefits associated with interest charge domestic international sales corporations ("IC-DISCs"). At the suggestion of Accounting Firm, Individual engaged Law Firm to further advise Individual on the formation and operation of IC-DISCs, including, but not limited to, the preparation and filing of the necessary elections and documents that would need to be filed for Taxpayer to be treated as an IC-DISC.

Taxpayer was incorporated on Date 1 and was intended to be treated as an IC-DISC from inception. Following the incorporation of Taxpayer, Attorney agreed to be responsible for preparing and providing Form 4876-A to Accounting Firm for the purpose of obtaining signatures and filing the signed Form 4876-A. Thus, Accounting Firm, at all times, expected Law Firm to timely prepare and provide Form 4876-A. Believing all the requirements to conduct business and to be treated as an IC-DISC were satisfied, Taxpayer began operating as an IC-DISC as of Date 1. On Date 2, in reviewing Law Firm's files regarding Taxpayer, Attorney realized he had failed to prepare Form 4876-A.

Even though Taxpayer had assumed that all the necessary requirements to conduct business as an IC-DISC were satisfied, it did not qualify as an IC-DISC for federal income tax purposes because it did not timely file a Form 4876-A with the Service within 90 days after Date 1. Taxpayer represents that it did not realize this error until Date 2 when informed by Attorney that Form 4876-A had not been timely prepared. Upon discovery that the form had not been filed, Taxpayer requested that Law Firm submit a ruling request granting Taxpayer an extension of time to file Form 4876-A for its first taxable year.

## LAW AND ANALYSIS

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC<sup>2</sup> shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Section 992(b)(1)(B) provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in

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<sup>1</sup> The beneficiary of Trust is Individual. Individual asserts that Trust does not involve a Roth IRA or any other kind of tax-favored retirement account.

<sup>2</sup> As used in this letter, the terms "IC-DISC" and "DISC" have the same meaning.

such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A. A corporation electing to be treated as an IC-DISC for its first taxable year must make the election within 90 days after the beginning of that year.

Treas. Reg. § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

The election described in the third sentence of Temp. Treas. Reg. § 1.921-1T(b)(1) is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief set forth in Treas. Reg. § 301.9100-3.

Based on the facts and representations submitted, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). In addition, we express no opinion as to whether the payment of purchase prices or commissions (or portions thereof) to Taxpayer by Company may constitute taxable gifts. See, e.g., Rev. Rul. 81-54, 1981-1 C.B. 476. A copy of this letter ruling should be filed with the Form 4876-A.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that written determinations may not be used or cited as precedent. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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Christopher J. Bello  
Chief, Branch 6  
Office of Associate Chief Counsel (International)

Enclosure (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: